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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09 747,850	12 21 2000	Martin Jager	99 044NUT	4425

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ProPat LLC
2912 CROSBY ROAD
Charlotte, NC 28211

EXAMINER

PRATT, HELEN F

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 04/03/2003

11

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/747,850

Applicant(s)

JAGER ET AL

Examiner

Helen F. Pratt

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 February 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

-- KNOWLEDGE OF THIS ACTION IS HELD TO BE NOTICE OF THE ACTION --

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Drafters and Patent Drawing Review (PTO-949)
- 3) ☐ Notice of Informal Patent Application (PTO-152)
- 4) ☐ Interview Summary (PTO-413) Paper No. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, ~~4~~⁵-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ueda et al.

The claims are rejected for the reasons of record cited in the last office action and for these further reasons. Claim 1 has been amended to require that the encapsulating material be from a particular group of ingredients. However, as before, chitosan is known to be a polysaccharide. Therefore, it would have been obvious to coat with a known shell former.

Claims 1, 2, ~~4~~, 6, 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ghani (6,120,811).

The claims are rejected for the reasons of record cited in the last office action and for the reasons cited above.

Claim 11-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ghani as applied to claims 1, 2, ~~4~~, 8-10 above, and further in view of Ardaillon et al. and

The claims are rejected for the reasons of record cited in the last office action. The limitations of claims 12-19 are seen as further refinements of the original claims, whose limitations have been addressed above and are obvious for those reasons.

Hessel discloses an encapsulated fiber composition, which can contain various additives, such as vitamins, coloring agents, and sweeteners (page 23, lines 1-7). The additives can be added with the fiber, and the product is seen to be encapsulated (page 23, last 4 lines of claim 10, and drawings, of fig. 1 and 2). Therefore, it would have been obvious to add numerous ingredients to the composition.

Behr et al. disclose a process of encapsulating fiber in zein (abstract) using the polysaccharides (zein), and ethanol /water mixture. The coating solution is applied to the guar gum, atomized, fluidized coated (col. 15, lines 20-50). Fluidization is seen to remove the ethanol mixture. Therefore, it would have been obvious to encapsulate using polysaccharides such as zein and to remove the ethanol mixture, in the composition of the combined references.

ARGUMENTS

Applicant's arguments filed 3-5-03 have been fully considered but they are not persuasive. Applicants argue that capsules are formed as in claim 11 and that the core is surrounded on all sides and that spheres are formed, by spray drying. However, no spray-drying limitation is seen in the claims. The illustration found in Appendix A is noted. However, the most that can be seen is that the particle is round, with most likely coating. There is actually a break in the coating at the left side of the picture.

Applicants argue that Ghani discloses microgranules and not microcapsules. However, as to the composition, no weight is given to the method of making the composition. The fact that the procedures of the reference are different than that of applicant is not a sufficient reason for allowing the product-by-process claims since the patentability of such claims is based upon the product formed and not the method by which it was produced. See *In re Thorpe* 227 USPQ 964. The burden is upon applicant to submit objective evidence to support their position as to the product-by-process claims. See *Ex parte Jungfer* 18 USPQ 2D 1796.

Applicants argue further as to claim 1 that the method of making the composition affects whether the fiber particles are surrounded on all sides by the coating. This does not mean the coating is complete, and applicants picture does not show this due to the break in the coating. Also, it is not seen at this time that this is not shown by the references. The picture should also be in the form of an affidavit or declaration to give patentable weight. It is not seen that the particles of Ghani are perforated and even if they are, the claims do not state any degree of encapsulation. Certainly, the method of making the product as above, does not add patentable weight.

Applicants argue that Ueda et al. teach only an amount of chitosan of from 1-15% and is more of a minor ingredient and that fatty acids are not included in applicants list. However, Ueda et al. disclose that the coating composition can contain fats, but doesn't have to, since the fats plus chitosan, are part of a Markush grouping, and can

Applicants claim 1 and 2 do not claim any amounts to distinguish the before-

As to "complete surrounding the core with chitosan, the reference discloses as much as is claimed. No limitations are given about the degree of encapsulation, thickness, etc.

Applicants argue that there is not reason to apply the teachings of Ghani when looking for a solution to make a stable complex. Particularly as to the composition, the problem does not have to be the same if the composition is the same or obvious.

As to Argaillon et al. which does not call for solvents to be removed, a new reference has been added.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 703-308-1978. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on (703) 308-3959. The fax phone number for the organization where this application or proceeding is assigned is 703-305-7718. The Examiner's fax number is 703-872-9706.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.

Hp 3-31-03

HELEN PRATT
PRIMARY EXAMINER